



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD-2018-OS-0055]

RIN 0790-AK41

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is finalizing the rule to exempt from the Privacy Act some records maintained in the DoD Defense Manpower Data Center system of records titled “Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) Records,” A system of records notice for this system has been published in the Federal Register.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, D.C. 20311-1155, or by phone at (571) 372-0478.

SUPPLEMENTARY INFORMATION: On August 21, 2018, the Department of Defense published a proposed rule titled “Privacy Act of 1974; Implementation,” which proposed to exempt some records maintained in DMDC 18 DoD, “Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) Records” (83 FR 42234-42235) from subsection (d) of the Privacy Act. The public comment period ended on September 20, 2018. At the end of the public comment period, DoD did not receive any pertinent public

comments.

DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728-14811) that contains all the codified information required for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. The OSD/JS Privacy Program regulation at 32 CFR part 311, last updated on October 30, 2009 (74 FR 56114), was no longer required and was removed from the CFR on August 7, 2019 (84 FR 38552). A system of records notice for this system was published in the Federal Register on August 21, 2018 (83 FR 42262-42266).

This modification to 32 CFR part 310 adds a new Privacy Act exemption rule for the Synchronized Redeployment and Operational Tracker Enterprise Suite (SPOT-ES), which is used at installations to manage, track, account for, monitor, and report on contracts, companies, and contractor employees supporting contingency operations, humanitarian assistance operations, peace operations, disaster relief operations, military exercises, events, and other activities that require contractor support. Contract scope, installations, and/or activities requiring contractor support as documented in SPOT-ES may be classified under Executive Order (E.O.) 13526, "Classified National Security Information." Information classified under E.O. 13526, as implemented by DoD Manual (DoDM) 5200.01 Volumes 1 and 3, and DoD Instruction (DoDI) 5200.01, may be exempt pursuant to 5 U.S.C. 552a(k)(1). Granting unfettered access to information that is properly classified pursuant to those authorities may cause damage to the national security.

## **Regulatory Procedures**

### **Executive Order 12866, “Regulatory Planning and Review,” Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action under these Executive Orders.

### **Congressional Review Act**

The Congressional Review Act, title 5, U.S.C. section 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### **2 U.S.C. Ch. 25, “Unfunded Mandates Reform Act”**

This final rule is not subject to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532) because it does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100M or more in any one year.

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C Chapter 6)**

It has been certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within DoD. A Regulatory Flexibility Analysis is not required.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

**List of Subjects in 32 CFR Part 310**

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

**PART 310—[AMENDED]**

1. The authority citation for 32 CFR part 310 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

2. Section 310.29 is amended by adding paragraph (c)(28) to read as follows:

**§ 310.29 Procedures for exemptions.**

\*\*\*\*\*

(c) \*\*\*

(28) *System identifier and name.* DMDC 18 DoD, Synchronized Predeployment and Operational Tracker Enterprise Suite (SPOT-ES) Records.

(i) *Exemption.* Information classified under E.O. 13526, as implemented by DoD Instruction (DoDI) 5200.01 and DoD Manual (DoDM) 5200.01, Volumes 1 and 3, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Reasons.* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 13526, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3, may cause damage to the national security.

Dated: May 12, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-10313 Filed: 5/14/2021 8:45 am; Publication Date: 5/17/2021]